



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,778	12/20/2001	Paul J. Klock	W0543/7052 KDW	9598

7590 07/03/2003
Randy J. Pritzker
Wolf, Greenfield & Sacks, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,778

Applicant(s)

KLOCK ET AL.

Examiner

James N Smalley

Art Unit

3727

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The affidavit under 37 CFR 1.132 filed 07 April 2003 is sufficient to overcome the rejection of claims 1-35 based upon 35 U.S.C. 102(b).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the seal attached to the sealing ring mounted on the outer periphery of the lower surface, as claimed in claims 7 and 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: It contains the grammatical error, "...removable secured..." Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 3-8, 13 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3727

Regarding claims 1, 13 and 31, it is unclear what the applicant is claiming as the stopper. To the best degree the examiner understands the claimed subject matter, the “stopper” as referred to in paragraphs 2 and 3 of claim 1, refers broadly to stopper (26) as well as handle (20). The fourth paragraph of claim 1, as well as the entire claim 13 and 31, attempts to distinguish a portion of the stopper (26) secured to the body and a remaining portion removably filling the opening. It is unclear how a portion of (26) can meet this limitation. It appears the applicant’s intent in claim 4 is to distinguish stopper (26) and handle (20). In view of the best degree the examiner understands the wording of claim 1, it is suggested the applicant use terminology other than “stopper” to describe the unitary element comprising the stopper (26) and the handle (20).

Regarding claims 3-8, claim 3 is dependant upon canceled claim 2.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3 and 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Molo ‘978.

Molo ‘978 discloses a Seal with Vent, comprising:

a body portion (14) substantially surrounded by an outer edge, the body portion having an opening (30) therein; and

a stopper (34) movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position;

Art Unit: 3727

wherein the stopper causes a substantially air-tight seal between the cover and a container when in the closed position, and allows the cover to be removed from the container when the stopper is in the open position by releasing the air-tight seal; and

wherein the stopper includes a flap (36) having a portion of the flap (42) removably secured to the body portion of the cover and a remaining portion of the flap (38) that removably fills the opening,

(cl. 3) further comprising:

an upper surface;

a lower surface having an outer periphery adjacent the outer edge; and

a sealing ring (16) mounted on a substantial portion of the outer periphery of the lower surface, wherein the sealing ring in combination with the stopper effects the air-tight seal between the cover and the container when the opening is closed by the flap,

(Examiner notes Molo '978 discloses, in col. 4, line 63 through col. 5, line 4, that the vent assembly provides a complete sealing of the container. Further, examiner notes the sealing ring (16) is integral with the outer periphery of the lower surface. More specifically, the outer periphery of the lower surface curves upward and becomes the inner portion of the groove (22), best seen in fig. 3. It is this integral connection that the examiner reads the sealing ring as being, "mounted on a substantial portion of the outer periphery of the lower surface.")

(cl. 9) further comprising:

a handle (42) disposed in the body portion,

(Examiner notes one could grip mounting bar (42) and use it as a handle)

(cl. 10) further comprising:

Art Unit: 3727

an indentation (26) in the body portion substantially surrounding the handle,

(cl. 11) wherein the handle is set within the indentation and a top surface of the handle is substantially flush with an upper surface of the body portion of the cover,

(This is clearly seen in figure 3)

(cl. 12) wherein the handle is removable from the body portion,

(See col. 4, line 18, wherein it is disclosed the lugs can be withdrawn)

(cl. 13) wherein the stopper includes a flap having a portion of the flap attached to the handle, wherein a remaining portion of the flap removably fills the opening,

(cl. 14) further comprising:

an indentation in the body portion substantially surrounding the handle and stopper,

(cl. 15) wherein the handle and stopper are set within the indentation and top surfaces of the handle and the stopper are substantially flush with an upper surface of the body portion of the cover,

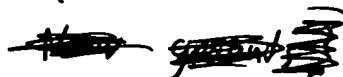
(cl. 16) wherein the handle and stopper are removable from the body portion.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 17-21, 23-25 and 27-30 and 34-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Ogino '732.

Handwritten signature and scribbles at the bottom of the page.

Art Unit: 3727

Examiner notes this rejection is maintained from the first non-final action, paper 6.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-6, 8-21, 23-25 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino '732 as applied above under 35 U.S.C. 102(b) to claim 1, and in view of Molo '978.

Ogino '732 discloses a Food Preservative Container, comprising:

a body portion (3) substantially surrounded by an outer edge, the body portion having an opening (19) therein; and

a stopper (34) movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position;

wherein the stopper causes a substantially air-tight seal between the cover and a container when in the closed position, and allows the cover to be removed from the container when the stopper is in the open position by releasing the air-tight seal.

Ogino '732 does not disclose:

wherein the stopper includes a flap having a portion of the flap removably secured to the body portion of the cover and a remaining portion of the flap that removably fills the opening.

Molo '978 discloses a Seal with Vent, including a flap (36) having a portion of the flap (42) removably secured to the body portion of the cover and a remaining portion of the flap (38)

Art Unit: 3727

that removably fills the opening, disclosing in col. 4, lines 63-66 that the seal provides a unique means for venting or providing a steam and pressure release for food containers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the vent means of Ogino '732 with the vent means of Molo '978, comprising the vent cover (34), stem (28) and pedestals (54), so as to obtain the benefit of a seal that provides a unique means for venting or providing a steam and pressure release for food containers. One having ordinary skill in the art would be motivated to make such a modification because both inventions disclose hand operated pressure/vacuum-breaking mechanisms disposed in recesses on the top surfaces of container lids.

Ogino '732 further discloses:

(cl. 3) further comprising:

an upper surface;

a lower surface having an outer periphery adjacent the outer edge; and

a sealing ring (16) mounted on a substantial portion of the outer periphery of the lower surface, wherein the sealing ring in combination with the stopper effects the air-tight seal between the cover and the container when the opening is closed by the flap,

(cl. 4) a flange (20) attached to the outer periphery of the lower surface, wherein the flange receives the sealing ring,

(cl. 5) wherein the sealing ring is removable from the flange,

(cl. 6) further comprising an arm (20) extending downwardly from the outer periphery of the cover;

a first flange member extending substantially perpendicular from the arm; and

Art Unit: 3727

a second flange member provided extending from the arm and substantially parallel to the first flange member forming a groove between the first and second flange members, wherein the groove receives at least a portion of the sealing ring,

(cl. 8) wherein the sealing ring is mounted on an entire outer periphery of the lower surface.

(cl. 9) further comprising:

a handle (42/ Molo '978) disposed in the body portion,

(Examiner notes one could grip mounting bar (42) and use it as a handle)

(cl. 10) further comprising:

an indentation (22) in the body portion substantially surrounding the handle,

(cl. 11) wherein the handle is set within the indentation and a top surface of the handle is substantially flush with an upper surface of the body portion of the cover,

(Examiner notes the handle and stopper of Molo '978 is flush with the upper surface. It would have been obvious to form this flush with the surface when modifying Ogino '732.)

(cl. 12) wherein the handle is removable from the body portion,

(See Molo '978, col. 4, line 18, wherein it is disclosed the lugs can be withdrawn)

(cl. 13) wherein the stopper includes a flap having a portion of the flap attached to the handle, wherein a remaining portion of the flap removably fills the opening,

(Examiner notes this claim has also been rejected above under 35 U.S.C. 112, 2nd paragraph for being indefinite.)

(cl. 14) further comprising:

an indentation (22) in the body portion substantially surrounding the handle and stopper,

(cl. 15) wherein the handle and stopper are set within the indentation and top surfaces of the handle and the stopper are substantially flush with an upper surface of the body portion of the cover,

(cl. 16) wherein the handle and stopper are removable from the body portion.

a cover having a body portion (3) substantially surrounded by an outer edge; and

a container portion including a sidewall attached to a base, the sidewall having an inner surface;

wherein the outer edge of the cover is adapted to fit adjacent a portion of the inner surface of the sidewall of the containing portion.

Regarding claims 17, Ogino '732 discloses a Food Storage Container, comprising:

a cover having a body portion (3) substantially surrounded by an outer edge; and

a container portion including a sidewall attached to a base, the sidewall having an inner surface;

wherein the outer edge of the cover is adapted to fit adjacent a portion of the inner surface of the sidewall of the containing portion,

(Examiner notes that the inner surface of the sidewall of Ogino '732 is being read to include the top surface of the lid. See attached Examiner's Figure 1, taken of figure 1 of Ogino '732. Alternately, even according to the applicant's arguments that Ogino '732 fits over the container body, it can be reasonably argued that the cover is *adjacent* the inner surface fo the side wall.

(cl. 18) the body portion further comprising:

a top surface;

Art Unit: 3727

a bottom surface having an outer periphery adjacent the outer edge; and

a sealing ring (42) mounted on a substantial portion of the outer periphery of the bottom surface of the body portion, wherein the sealing ring effects an air-tight seal between the cover and the containing portion,

(cl. 19) further comprising: a ridge (10) provided on the sidewall of the containing portion, wherein the sealing ring is adapted to engage the ridge,

(cl. 20) further comprising a flange (20) attached to the outer periphery of the bottom surface, wherein the flange receives the sealing ring,

(cl. 21) wherein the sealing ring is removable from the flange,

(cl. 23) wherein the sealing ring is mounted on the entire outer periphery of the bottom surface,

(cl. 24) further comprising an arm extending downwardly from the outer periphery of the cover; and

a flange member extending substantially perpendicular from the arm, the sealing ring removably engaged with at least a portion of the flange member,

(cl. 25) the flange further comprising:

a second flange member extending from the arm and provided substantially parallel to the first flange member forming a groove (21) between the flange members, wherein the groove removably receives at least a portion of the sealing ring,

(cl. 27) further comprising:

a handle (34/Molo '978) disposed in the top surface of the body portion,

(cl. 28) further comprising:

Art Unit: 3727

an indentation (22) in the body portion substantially surrounding the handle,

(cl. 29) wherein the handle is set within the indentation and a top surface of the handle is substantially flush with the top surface of the body portion of the cover,

(cl. 30) further comprising:

an opening (30/ Molo '978) defined by the body portion of the cover, and a stopper removable between an open position and a closed position, the stopper adapted to close the opening in the closed position, and expose the opening in the open position;

wherein the stopper causes a substantially air-tight seal between the cover and the containing portion when in the closed position, and allows the cover to be removed from the container when the stopper is in the open position by releasing the air-tight seal,

(cl. 31) wherein the stopper includes a flap having a portion of the flap removably secured to the body portion of the cover, wherein the remaining portion of the flap removably fills the opening,

(Examiner notes this claim has also been rejected above under 35 U.S.C. 112, 2nd paragraph for being indefinite.)

(cl. 32) a top surface;

a bottom surface having an outer periphery adjacent the outer edge; and

a sealing ring mounted on a substantial portion of the outer periphery of the bottom surface of the body portion,

wherein the sealing ring in combination with the stopper effects the air-tight seal between the cover and the inner surface of the containing portion when the opening is closed by the flap,

Art Unit: 3727

(cl. 33) a flange attached to the outer periphery of the lower surface, wherein the flange receives the sealing ring,

(cl. 34) further comprising:

a ridge provided on the sidewall of the containing portion, wherein the outer edge of the cover is adapted to engage the ridge.

Regarding claim 35, Ogino '732 discloses a container comprising:

a cover having a body portion substantially surrounded by an outer edge, the body portion having an opening (30/Molo '978) therein;

(Examiner notes the outer edge is being read as the double flange arrangement that defines the groove (21).)

a stopper (34) and a handle combination provided on the body portion, the stopper movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position; and

a containing portion including a sidewall (6) attached to a base (8), the sidewall having an inner surface,

wherein the outer edge of the cover is adapted to fit a portion (10) of the inner surface of the sidewall of the containing portion and the stopper is adapted to cause an air-tight seal between the cover and the containing portion when in the closed position, and allows the cover to be removed from the containing portion when the stopper is in the open position by releasing the air-tight seal.

Art Unit: 3727

(Examiner notes that the inner surface of the sidewall of Ogino '732 is being read to include the top surface of the lid. See attached Examiner's Figure 1, taken of figure 1 of Ogino '732.)

not disclose the sealing ring being mounted on the outer periphery o the lower surface using adhesive.

10. Claims 7, 22 and 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino '732 as applied above under 35 U.S.C. 103(a) in view of Molo '978 to claims 1 and 17 and in further view of Poslinski et al. '152.

Poslinski et al. '152 disclose a sealing ring being held in place through bonding (see col. 2, lines 66-67 where Poslinski et al. cite bonding as a method of fixing the sealing ring to the container lid) directly to the lower surface periphery. It is well known that using adhesives is a means to bond two items together.

Regarding claims 7 and 22, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the sealing ring directly to the lower surface periphery, as taught by Poslinski et al. '152, so as to obtain the benefit of a hermetic seal, since it is well known to provide container lids with a sealing ring.

(Examiner notes that because the applicant has not provided a diagram of the embodiment comprising a sealing ring adhesively attached to the outer periphery of the lower surface of the cover, the disclosure of Poslinski et al. '152 meets the claimed limitation, to the best degree the examiner understands the invention.)

Regarding claim 26, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sealing ring of Ogino '732, to bond it to the

Art Unit: 3727

container lid so as to provide a stronger seal between the sealing ring to the container lid and to prevent the seal from inadvertent removal.

Response to Arguments

11. Applicant's arguments, see pages 3-4 of the Amendment, filed 04/07/03, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Molo '978.

12. Applicant's arguments filed 04/07/03 regarding claims 17 and 35 have been fully considered but they are not persuasive.

Applicant argues the cover of Ogino '732 fits over the containing portion and does not fit adjacent an inner surface of the sidewall.

Examiner notes the inner surface of Ogino '732 is being defined as everything that is not exterior of the container. This includes the top of the container edge. See attached Examiner's Figure 1.

Further, Examiner notes the contact point between the cover and the container of Ogino '732, seen in fig. 1, is only a few angular degrees apart, along the curved upper edge of the container, from the contact point of the present application, best seen in figure 5. It can be reasonably argued that the contact between the cover and container of Ogino '732 will effectuate as much a seal as that of the present application.

Conclusion

Because the Examiner has formed new grounds of rejection, this action is **Non-Final**.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,303,171

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Art Unit: 3727

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

jns
June 19, 2003


Stephen K. Cronin
Primary Examiner

Examiner's figure 1 / Ogino '732

